

§ 1260.28 Patent rights.

PATENT RIGHTS (JULY 1996)

This award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 “Patent Rights (Small Business Firms and Nonprofit Organizations)” and the following:

(a) Where the term “contract” or “contractor” is used in the “Patent Rights” clause, the term shall be replaced by the term “grant” or “recipient,” respectively.

(b) In each instance where the term “Federal Agency,” “agency,” or “funding Federal agency” is used in the “Patent Rights” clause, the term shall be replaced by the term “NASA.”

(c) The NASA regulation applicable to paragraph (e) of the “Patent Rights” clause is at 37 CFR Part 404, Licensing of Government-owned Inventions.

(d) The following item is added to the end of paragraph (f) of the “Patent Rights” clause:

(5) The recipient shall include a list of all Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal, and a complete list (or a negative statement) for the entire award period shall be included in the summary of research.

(e) The term “subcontract” in paragraph (g) of the “Patent Rights” clause shall include purchase orders.

(f) The NASA implementing regulation for paragraph (g)(2) of the “Patent Rights” clause is at 48 CFR 1827.373(b).

(g) The following requirement constitutes paragraph (l) of the “Patent Rights” clause:

(l) Communications. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the administrative grant officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a “subject invention” for which the recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the recipient identify the information and the “subject invention” to which it relates at the time of submittal. If required by the administrative grant officer, the recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any “subject invention” in any country in which the recipient has applied for patents.

h. *NASA Inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or

which bear a direct relation to, the performance of specified NASA activities under this agreement and, upon timely request, will use reasonable efforts to grant recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

i. In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will use reasonable efforts to grant recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

§ 1260.29 Rights in data.

RIGHTS IN DATA (JULY 1996)

(a) *Fully Funded Efforts.*

(1) “Data” means recorded information, regardless of form, the media on which it may be recorded, or the method of recording, created under the grant. The term includes, but is not limited to, data of a scientific or technical nature, and any copyrightable work in which the recipient asserts copyright, or for which copyright ownership was purchased, under the grant.

(2) The recipient grants to the Federal Government, a royalty-free, nonexclusive and irrevocable license to use, reproduce, distribute (including distribution by transmission) to the public, perform publicly, prepare derivative works, and display publicly, data in whole or in part and in any manner for Federal purposes and to have or permit others to do so for Federal purposes only. Federal purposes include competitive procurement but do not include the right to have or permit others to use data for commercial purposes.

(3) In order that the Federal Government may exercise its license rights in data, the Federal Government, upon request to the recipient, shall have the right to review and/or obtain delivery of data resulting from the performance of work under this grant, and authorize others to receive data to use for Federal purposes.

(4) If information which recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into data as defined herein), identified and marked with a suitable notice or

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legend and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(b) *Cost Sharing and/or Matching Efforts.* When the recipient cost shares with the Government on the effort, the following is added:

(5) In the event data first produced by recipient in carrying out recipient's responsibilities under an agreement is furnished to NASA, and recipient considers such data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) only for experimental, evaluation, research and development purposes, by or on behalf of the Government for an agreed to period of time, and thereafter for Federal purposes as defined in § 1260.29(a)(2).

c. *Add the following paragraph in Cooperative Agreements.* (#) As to data first produced by NASA in carrying out NASA's responsibilities under a cooperative agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it has been obtained from the recipient, such data will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ____ years (*insert a period of up to 5 years.*) after development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such data to any third party without NASA's written approval until the aforementioned restricted period expires.

§ 1260.30 National security.

NATIONAL SECURITY (JULY 1996)

Normally, NASA grants do not involve classified information. However, if information is sought or developed by the recipient that should be classified in the interests of national security, the NASA grant officer who issued the grant shall be notified immediately.

§ 1260.31 Nondiscrimination.

NONDISCRIMINATION (JULY 1996)

(a) To the extent provided by law and any applicable agency regulations, this award and any program assisted thereby are subject to the provisions of Title VI of the Civil

Rights Act of 1964 (Pub. L. 88-352), Title IX of the Education amendments of 1972 (Pub. L. 92-318), 20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (Pub. L. 94-135), the implementing regulations issued pursuant thereto by NASA, and the assurance of compliance which the recipient has filed with NASA.

(b) The recipient shall obtain from each organization that applies or serves as a subrecipient, contractor or subcontractor under this award (for other than the provision of commercially available supplies, materials, equipment, or general support services) an assurance of compliance as required by NASA regulations.

(c) Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d-1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 et seq.), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

§ 1260.32 Subcontracts.

SUBCONTRACTS (JULY 1996)

(a) For all subcontracts over \$25,000 awarded by the recipient, the recipient shall provide the following to the NASA grant office for approval.

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) The subcontract budget and basis for subcontract cost or price.

(b) The recipient (with the exception of foreign organizations) shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

(c) All contracts awarded by a recipient, including small purchases, shall contain the provisions found in appendix A to subpart B of part 1260, as applicable.

§ 1260.33 Clean Air and Water.

CLEAN AIR AND WATER (JULY 1996)

(Applicable only if the award exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)), and 9s listed by